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April 25, 2008

Via Facsimile Only (212) 805-4258

APRIL 28 2008

Hon. Magistrate Judge Debra C. Freeman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 525
New York, NY 10007

Re: DiPrisco v. Marriott Int'l
Docket No.: 07-CV-3531 (CM)(DCF)
Our File No.: 104-12742-D-PAF/DMS

Dear Judge Freeman:

My office represents the defendant Marriott in this case. Despite our efforts to contact nonparty witness Aimee Yohann and schedule her deposition, Ms. Yohann has not responded to our numerous messages and letters. Your Honor previously ordered that the deposition must be completed by April 30, 2008.

Ms. Yohann was served with a subpoena on February 12, 2008. A copy of the affidavit of service was previously forwarded to Your Honor with our letter dated April 15, 2008. Ms. Yohann's deposition was originally scheduled for February 20, 2008. However, she failed to either appear or contact us on that date to request an alternative date.

After obtaining Ms. Yohann's number from plaintiff's counsel, Ms. Yohann agreed to appear on April 7, 2008. We agreed to conduct the deposition at 5 pm out of deference to Ms. Yohann's work schedule. However, Ms. Yohann again failed to appear as scheduled, nor did she contact our office to explain her absence.

Our calendar clerk, Lise-Ann Kaidoo, left several messages for Ms. Yohan on April 14, 2008, regarding the deposition, and again on April 16, 2008. Ms. Kaidoo's calls eventually went unanswered, as the answering machine was apparently turned off. On April 17, 2008, we sent Ms. Yohann a letter by certified mail regarding the deposition. She has not contacted us in any way.

As Ms. Yohann was traveling with the plaintiff and staying at the same hotel at which he was injured she will be able to provide relevant testimony on the issue of notice, which is the crux of plaintiff claim. At this time, we seek the Court's assistance in securing Ms. Yohann's deposition prior to Your Honor's April 30 deadline. In the alternative, we ask for leave to make a motion for sanctions against Ms. Yohann so that we may recover the costs incurred in scheduling this deposition.

SO ORDERED: DATE: 4/29/08

DEBRA FREEMAN

UNITED STATES COURTHOUSE

Defendant may take appropriate steps to seek to have Ms. Yohann held in contempt under Fed. R. Civ. P. 45(e).


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Thank you for your attention herein.

Very truly yours,

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